

RESOLUTION 21-18
THE TOWN OF FOREST HEIGHTS

**A RESOLUTION APPROVING AND AUTHORIZING A REQUEST TO THE
MARYLAND MUNICIPAL LEAGUE ("MML" OR THE "LEAGUE") TO
PARTICIPATE IN A PENDING APPELLATE LITIGATION MATTER**

Introduced By: Mayor Habeeb-Ullah Muhammad

WHEREAS, the Town of Forest Heights (the "Town") has authority to sue and be sued, to plead and be impleaded in any court of law or equity pursuant to the Town Charter, Section 33-1; and

WHEREAS, on behalf of the Town, the Mayor and Council has authorized, and accordingly the Town Attorney has filed an appeal (i.e., the second appeal) to the Court of Special Appeals of Maryland of a declaratory judgment decision and is preparing to file a petition requesting a writ of certiorari to the Court of Appeals of Maryland regarding Annexation Resolutions 01-2016 and 02-2016 that were voided and nullified in the recent Opinion and Order of the Circuit Court for Prince George's County dated January 31, 2018 in Case No. CAL16-29110; and

WHEREAS, this matter is related to a litigation matter that was appealed (i.e., the first appeal) to the Court of Special Appeals in the case of *Town of Forest Heights v. Maryland-National Capital Park and Planning Commission and Prince George's County*, Case No. 2711 (Sept. Term, 2015) that was reviewed by a panel of MML's attorneys appointed on August 26, 2016 and later voluntarily dismissed by the Town after it adopted new annexation resolutions that essentially mooted the appeal; and

WHEREAS, although it expressly does not limit the scope of appeal, the Appellant's Civil Appeal Information Report filed on March 5, 2018 in the referenced matter states the following municipal issues in the case on appeal: 1.) Does the Park and Planning Commission and Prince George's County have a right to consent to the municipal annexation of their tax-exempt lands particularly in light of *Salisbury v. Banker's Life*, 21 Md. App. 396 (1974)? 2.) Did the court err in *sua sponte* raising the issue that removal of a county road from an unincorporated area for which the State would have allocated highway user funds to the county would make the road a municipal road thereby creating a loss of shared (highway user) revenues or financial burden necessary under *Banker's Life* to allow the county a voice in the annexation of real property to the municipal corporation, and 3.) Does the annexation of solely tax-exempt lands without any taxable real property included in the area to be annexed allow the tax-exempt property owners the right to consent to a municipal annexation; and

WHEREAS, during the first appeal, the MML panel of attorneys recommend in its memorandum dated September 2, 2016 to the MML Board of Directors pertaining to the first issue regarding county consent to the annexation identified in the above recital that the County's

assertion “could certainly raise a substantive concern that would independently justify MML’s participation, if requested, which the Board may need to consider in deciding whether to participate in the current litigation before the Court of Special Appeals;” and

WHEREAS, the Mayor and Council find that the second case nullifying said municipal annexation resolutions includes several issues, involving the annexation procedures, state shared revenues and the authority of municipalities as defined by statute and long settled case law, whereby the final resolution thereof could substantially impact, alter or modify the law concerning the exercise of municipal powers on a statewide basis; and

WHEREAS, according to MML’s Litigation Participation Policy, a resolution must be passed by the governing body of the member municipality that specifically identifies the participation requested and why the municipality deems the League's participation necessary or desirable accompanied by the payment of a review fee in an amount not less than five hundred dollars (\$500.00) nor more than twenty-five percent (25% or \$ 490.21) of the municipality's annual League dues, which were \$ 1,960.82 in FY 2018, and the League shall pay all costs of the review panel in excess of any review fee for which a member municipality is responsible; and

WHEREAS, according to said MML policy a check in the amount of five hundred dollars (\$500.00) must accompany any request for the League's participation and the League shall bill the municipality for any balance due after completion of the review process as set forth therein; and Line Item 7025

NOW THEREFORE BE IT RESOLVED, that the Town Council hereby approves and authorizes the aforesaid payment of a review fee and the making of a second request for the League's participation in the pending appeal as described in the above recitals, which are incorporated herein, and according to the terms and conditions stated in MML’s Litigation Participation Policy; and

AND BE IT FURTHER RESOLVED, that, if requested by MML, the Town Attorney and/or co-counsel may make an oral presentation as to why the League’s participation is necessary or desirable or submit other documentation necessary to carry out the intent of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon passage. PASSED this 1st day of April 2018.

APPROVED: By Resolution of the Town Council of The Town of Forest Heights, Maryland.

ROLL CALL VOTE

YEA/NAY/ABSTAIN/ABSENT

MUHAMMAD

Yea

KENNEDY II

Yea

MCLAURIN

Yea

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BARNES

HINES

WASHINGTON

BROWNSON

Ugh
Ugh
Ugh
Ugh

ATTEST:

THE TOWN OF FOREST HEIGHTS,
MARYLAND

SIGNATURE ON FILE

Sherletta Hawkins, Town Clerk

By:

SIGNATURE ON FILE

Habeeb-Ullah Muhammad, Mayor

SIGNATURE ON FILE

By:

Calvin Washington, Council President

CERTIFICATION

I, hereby certify, as the duly appointed Town Clerk of the Town of Forest Heights, Maryland, that on the 18 day of April 2018 with 1 Aye votes and 0 Nay vote the aforesaid Resolution 21-18 passed.

SIGNATURE ON FILE

Sherletta Hawkins, Town Clerk